**DID YOU KNOW…….**

Federal Law

Under the federal Controlled Substances Act, marijuana is a Schedule I drug in the same category as heroin and LSD for which there is no currently accepted legal use in treatment and with a high potential for abuse. Although proposals have been raised in Congress to legalize medical marijuana, such measures have been met with opposition. While the Obama administration took more of a hands-off approach and stated that the Department of Justice would not intervene with state medical marijuana use, the Trump administration has indicated that it will not be as lenient.

State Law

The laws of each state vary with respect to:

 • What is considered a qualifying condition for which use is permitted (i.e., cancer, HIV, Parkinson’s, PTSD). Some states contain a “catch-all” provision permitting use for any other condition that is severe and for which other medical treatments have been ineffective, if symptoms can reasonably be expected to be relieved by medical marijuana.

• Possession limits.

• Methods by which marijuana may be ingested.

• Requirements for qualifications to possess a medical marijuana card; and • Physician evaluations.

Most state marijuana laws do not protect medical marijuana users or their caregivers from arrest or prosecution for being under the influence of marijuana while:

 • Operating a motor vehicle.

 • Being in a workplace or place of employment; and

 • Operating heavy machinery or dangerous equipment.

**Create your workplace drug policy based on your state laws.**

Most state medical marijuana laws also permit an employer to ban marijuana use at work and prohibit all employees from working under the influence of marijuana. Further, some states may have requirements regarding preemployment testing for marijuana. States vary on whether medical marijuana users will be protected from discrimination for off-duty use of medical marijuana and whether an employer will be required to provide a reasonable accommodation to an individual with a disability. Check your state laws.

1. Maintain a drug free workplace

 Even though marijuana has been increasingly legalized on the state level for medical and recreational purposes, no employer needs to permit an individual to bring marijuana into work or to use it at work. An employer is encouraged to promote drug free workplace policies. In fact, this is required by federal contractors and federal grantees under the Drug Free Workplace Act. Special rules also apply to the transportation industry and individuals in safety-sensitive positions. Additionally, under the Occupational Safety and Health Act (OSH Act) and similar state laws, employers have a general duty to provide a safe work environment.

Under some state laws, an employer may be required to accommodate medical marijuana use outside of work. Potentially consider providing employees and applicants with the opportunity to disclose if they are taking medical marijuana to address a present disability.

1. Determine your drug testing policy

Given the changing legal landscape regarding marijuana, an employer needs to decide whether testing for marijuana is necessary under the circumstances. While it may be prudent or required for workers in public safety, construction or healthcare jobs, it may not be reasonably related to many other positions. If an employer chooses to conduct drug testing, ensure that it is job-related and consistent with business needs. Also be aware of relevant state and local laws regarding drug testing procedures.

1. Inform applicants and employees of testing procedures

It is critical to communicate with applicants and employees regarding your drug testing policy and procedures in the employment application as well as in the employee handbook and other workplace policies. In fact, some states require written drug testing policies. A drug testing policy should set forth expectations for all employees as well as the purpose and parameters of the testing, how testing will be conducted, what constitutes a failed test and the penalties for a failed test.

1. Understand when you may test for marijuana use

Under federal law and many state laws, an employer may drug test prospective employees for marijuana and refuse to hire them based on a failed test. However, testing employees is more difficult as it may generally only occur when there is a reasonable suspicion of drug use and/or an accident has occurred, although some states may permit random drug testing with advance notice.

1. Determine how to handle test results

If the employer conducts drug testing and an employee fails a drug test, determine how to handle the results and what actions may be taken against such applicants or employees. Consider providing counseling and assistance and a second chance to work to become clean or end addiction through medication, counseling and therapy.

1. Consider addressing marijuana use in other workplace policies

Consider addressing marijuana use in other workplace policies such as disciplinary policies, no smoking policies and safe driving policies as this will ensure that employees have an understanding of what type of conduct is permissible and what is off limits with respect to marijuana in the workplace. As always, remember to enforce workplace policies regarding drug testing and related issues in a uniform and consistent manner and apply policies equally to individuals in the organization. Otherwise, an employer risks a discrimination or unfair treatment claim.